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PART IV-C

**Statutory Rules and Orders (Other than those published in Parts I, I-A and I-L)
made by Statutory Authorities other than the Government of Gujarat
including those made by the Government of India, the High Courts, the
Director of Municipalities, the Commissioner of Police, the Director of
Prohibition and Excise, the District Magistrates and the Election
Commission, Election Tribunals, Returning Officers and other
authorities under the Election Commission.**

BY THE HIGH COURT OF GUJARAT AT AHMEDABAD

NOTIFICATION

No.C.2001/93

In exercise of the powers conferred under Article 227 of the Constitution of India, the High Court of Gujarat makes following amendments in the Criminal Manual 1977, so as to come into force with effect from the date of notification published in the Government Gazette.

1. After the paragraph 39 the following be inserted as paragraph 39A, with the heading, "**RECORDING OF STATEMENT OF VICTIM/ WITNESS (RELATING TO THE COMMISSION OF OFFENCE OF RAPE) UNDER SECTION 164 OF THE CODE.**", as follows:-

‘39A. RECORDING OF STATEMENT OF VICTIM/WITNESS (RELATING TO THE COMMISSION OF OFFENCE OF RAPE) UNDER SECTION 164 OF THE CODE.—

- (1) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall take immediate steps to present the victim before any nearest Metropolitan/Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C.
- (2) The Investigating Officer shall as far as possible present the victim before nearest Lady Metropolitan/Lady Judicial Magistrate.
- (3) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Lady Metropolitan/Lady Judicial Magistrate as aforesaid.

- (4) If there is any delay exceeding 24 hours in taking the victim to the nearest Magistrate, the Investigating Officer shall record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
- (5) It is not necessary for the Investigating Officer to approach the Chief Metropolitan Magistrate/Chief Judicial Magistrate with an application for nominating a Magistrate to record the statement of a witness/victim under Section 164 of the Code.
- (6) A Magistrate, whether he has got jurisdiction or not, to inquire into or try the case, can record the statement of a witness/victim under Section 164 of the Code, on the request of the Investigating Officer of the case.
- (7) The Presiding Officer of a Special Court which has been empowered to take cognizance of an offence without there being a need for committal, may also record the statement of a witness/victim under Section 164 of the Code, on the request of the Investigating Officer.
- (8) After recording the statement of a witness/victim under Section 164 of the Code, the Judge/Magistrate shall arrange to take two photocopies of such statement, under his direct supervision and certify the same as true copies.
- (9) He shall furnish one such certified photocopy of the statement to the Investigating Officer free of cost, immediately, with a specific direction to the latter to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report is filed.
- (10) The other certified photocopy of such statement shall be kept in a sealed cover in the safe custody of the Judge/Magistrate, who has recorded such statement.
- (11) If the Magistrate who had recorded the statement under Section 164 of the Code is not the jurisdictional Magistrate, he shall send the original statement to the jurisdictional Court, either through a special messenger or by Registered Post with Acknowledgment Due.
- (12) If the Magistrate who had recorded the statement under Section 164 of the Code is himself the jurisdictional Magistrate, he shall keep the original of the statement in the case records.
- (13) The accused has no right to receive a copy of such statement of witness/victim under Section 164 of Cr.P.C. and it will arise only after cognizance is taken and at the stage contemplated by Sections 207 and 208 of the code and not before and under no circumstances copies of statements recorded under Section 164 Cr.P.C. can be furnished till appropriate orders are passed by the Court after taking cognizance in the matter.
- (14) **Medical Examination of the victim:** Section 164A Cr.P.C. inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately examined by a Government Medical Officer. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C.
- (15) In cases punishable under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, sub-section (1) or sub-section (2) of Section 376, Section 376A, Section 376B, Section 376C, Section 376D, 376E or Section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5) of Section 164 of Cr.P.C., as soon as the commission of the offense is brought to the notice of the police.

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement.

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of the interpreter or a special educator, shall be video-graphed.'

2. After paragraph 37 in the Manual, the following paragraph 37A be inserted:

‘**37A.** After recording the confession statement of an accused and the statement of a witness/victim under Section 164 of the Criminal Procedure Code, the Magistrate shall arrange to take two photocopies of the same under his direct supervision and certify the same as true copies. The confession statement in original shall be sent in a sealed cover to the jurisdictional Court through a special messenger or by Registered Post with Acknowledgment Due. One certified copy of the confession statement shall be immediately furnished to the Investigation Officer free of cost with a specific direction to use it only for the purpose of investigation and not to make its contents public until the instigation is completed and final report filed. The other certified copy of the confession statement shall be kept in a sealed cover in safe custody of the Magistrate.’

3. In Chapter VI of the Manual, after paragraph 149(1), paragraph 149A be inserted:

‘**149A.** A statement recorded under clause (15) of para 39A of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in Section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.’

4. Insert following proviso after sub paragraph 92(3) of paragraph 92 of Chapter IV of the Manual:

‘Provided that when the inquiry or trial relates to an offence under Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA or Section 376DB of the Indian Penal Code, the inquiry or trial shall be completed within a period of two months from the date of filing of the charge sheet.’

MOOLCHAND TYAGI,
REGISTRAR GENERAL.

Date: February 23, 2024.

